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## **DECISION MEMO**

Agricultural and Livestock Water Conveyance System Easement  
for the Operation and Maintenance of the Tree Ditch  
Under the Act of October 27, 1986

USDA Forest Service  
Rocky Mountain Region  
Pike & San Isabel National Forests  
Comanche and Cimarron National Grasslands  
South Park Ranger District  
Park County, Colorado

### **BACKGROUND**

The Act of October 27, 1986, amended Title V of the Federal Land Policy and Management Act of October 21, 1976 (FLPMA) (43 U.S.C. 1761; 90 Stat. 2776) to authorize the Secretary of Agriculture to issue permanent easements without charge for water conveyance systems used for agricultural irrigation or livestock watering. The Act, commonly referred to as the Colorado Ditch Bill, requires that an easement must be granted if an applicant meets specific requirements and if the water system meets all criteria of the Act.

The facility, known as the "Tree Ditch", was constructed and has been in substantially continuous use since 1922. It has associated water rights with an original adjudication date of 1922, and a subsequent adjudication date of 1953. For these reasons the ditch facility is recognized as predating the Forest Land Policy and Management Act of 1976 in compliance with the required criteria associated with the issuance of an agricultural and livestock water conveyance system easement.

### **DECISION**

The granting of such easements is non-discretionary and, therefore, not a Federal action subject to analysis or review (FSM 2729.16f). However, analysis was conducted by the Pike National Forest to determine if there was a need for additional conditioning of the easement for operation and maintenance activities, and for the protection of Threatened, Endangered, or Sensitive (TES) Species. The purpose of this decision is to document any environmental concerns associated with the operation and maintenance of the facilities, their potential effect on TES Species and to document the need for any additional conditioning of the easement that may be necessary to protect the environment from degradation due to the continued operation of the water conveyance systems.

It is my decision to issue to Falcon Rest, LLC, an Agricultural Irrigation and Livestock Watering System Easement across National Forest System lands (0.03 acres) for a portion of the facility known as the "Tree Ditch". Standard terms and conditions contained in the easement are designed to protect the environment and comply with applicable State and Federal laws. I have decided to incorporate additional terms and conditions through an Operations and Maintenance Plan (O&M Plan) attached to each easement. I have determined that incorporation of an O&M Plan will not significantly change the use, operations or management of the facilities. This formal permanent easement will allow for the continued use and maintenance of this facility. This action includes

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access needed to operate and maintain the facility. In addition it will provide the holder with a legal written document that may be recorded for future reference.

After a thorough review of our Environmental Policy and Procedures Handbook (FSH 1909.15) I have determined that this action does not require documentation in an Environmental Assessment or an Environmental Impact Statement pursuant to FSH 1909.15, Chapter 30, Section 31. Chapter 31.2 outlines the Categorical Exclusions (CE) that require a case file and Decision Memo. This decision falls within the following category established under FSH 1909.15, Sec.31.2 (3) "Approval, modification, or continuation of minor special uses of National Forest System lands that require less than five contiguous acres of land."

The Categorical Exclusion is appropriate in this situation because this action will authorize a previously unauthorized and undocumented qualified use of National Forest System lands. No issues or concerns have been identified through public involvement, biological evaluation or internal scoping relevant to the issuance of an easement

## **PUBLIC INVOLVEMENT**

A notice that Ditch Bill Easement application processing would be an ongoing project on the Pike/San Isabel National Forest for one to three years was listed the 1<sup>st</sup> Quarter 2004 and the 2<sup>nd</sup> Quarter of 2006 in the Schedule of Proposed Actions (SOPA) for the Pike & San Isabel National Forests. A Public Scoping and Comment Notice which included this proposed action was published in the Pueblo Chieftain on February 16, 2006. A listing of ditches and associated locations which included this specific ditch was provided to Trout Unlimited in 2005. Additionally the proposal was scoped internally to determine whether there were any associated issues on the affected district.

No issues or concerns have been identified through public involvement, other agency notification or internal scoping relevant to the issuance of a Agricultural Irrigation and Livestock Watering System Easement for the "Tree Ditch". One written response was received from Mr. Andrew Peternell for Trout Unlimited, Colorado Office. This response contained four specific categories of generic type comments associated with process when reviewing applications and issuing Ditch Bill easements. However, there were no specifics associated with this easement.

## **FINDINGS REQUIRED BY OTHER LAWS**

This decision is consistent with the current Pike and San Isabel National Forests, Cimarron and Comanche National Grasslands Plan (the Plan) as required by the National Forest Management Act. The project will be implemented in accordance with the Forest Land and Resource Management Act (FLPMA) of October 21, 1976 as amended by the Act of October 27, 1986 (P.L. 99-545 Colorado Ditch Bill). In addition other Federal Laws were evaluated to determine whether additional terms and conditions for the ongoing operation and maintenance of the qualifying facility were needed. The owner of this facility was notified by letter that by their signature on the authorization they were agreeing to relinquish any and all previous claims that they might have held to prior statutory rights (FSM 2720.16(a)(9)).

A biological assessment/biological evaluation (BA/BE)) was completed on this proposal in October 2006. There will be no effects to any:

- Threatened, Endangered or Proposed plant or animal species
- Floodplains or wetlands
- Steep slopes or highly erosive soils
- Native American religious or cultural sites
- Archeological sites, or historic properties or areas
- Congressionally designated areas
- Inventoried roaded or roadless area
- Research Natural Sites.

### IMPLEMENTATION DATE

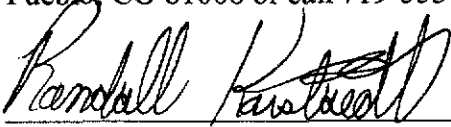
Implementation of this project may begin immediately.

### ADMINISTRATIVE REVIEW OR APPEAL OPPORTUNITIES

This decision is not subject to public comment and appeal pursuant to Forest Service Regulations 36 CFR Part 215.4(a) and Part 215.12(f).

### CONTACT PERSON

For additional information concerning this decision contact David Crumley, Realty Specialist, Pike & San Isabel National Forests, Comanche and Cimarron National Grasslands, 2840 Kachina Drive, Pueblo, CO 81008 or call 719-553-1501.

  
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FORE RICHARD C. STEM  
Deputy Regional Forester  
Rocky Mountain Region

May 2, 2007  
Date

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